

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated December 6, 2007 (hereinafter Office Action) have been considered. Claims 1-61 remain pending in the application. Claims 1, 39, 60, and 61 have been amended. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1-61 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement.

Without acquiescing to the rejection, Applicant has removed the element added to claims 1, 39, 60, and 61 made by amendment in the last Office Action, thus rendering this rejection moot. The present amendments should be entered because they remove an issue for appeal (the rejection under 35 U.S.C. §112) and the amendments require only a cursory review by the Examiner. (*see*, MPEP §714.13)

Claims 1-6, 8, 10-11, 13-25, 31-41, 44-49 and 51-61 are rejected based on 35 U.S.C. §102(b) as being anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 5,431,693 to Schroepfel (hereinafter “Schroepfel”).

Applicant respectfully disagrees that Schroepfel anticipates these claims. Each of the independent claims 1, 39, 60, and 61 teach or suggest in some form a second classification window that is implemented conditionally -- *if a triggering characteristic is detected in a first classification window*. Sensing of the cardiac signal continues beyond the first classification window *if the second classification window is triggered*. Because the second classification window is triggered in response to the triggering characteristic, it follows that if the trigger characteristic is not detected, the second classification window is not triggered and sensing does not continue in the second classification window.

Schroepfel does not teach a triggerable second classification window and thus does not anticipate Applicant’s claimed invention. Schroepfel describes sensing the amplitude of the second derivative in a first window of time following delivery of the cardiac stimulation pulse and also states that the amplitude of the second derivative is measured in a second window of time beginning at the selected time delay following delivery of said cardiac stimulation pulse. (*see*, Abstract). Although Schroepfel describes first and second

windows, Schroepfel does not teach a *triggerable second window*. Schroepfel's second window is always used, and is thus not a window that is established conditionally.

The Office Action states on page 4 that "the additional window is used to confirm either capture or non-capture." From this statement it follows that, in order to confirm capture, sensing in the second window occurs AND in order to confirm non-capture, sensing in the second window occurs. If sensing in the second classification window occurs to confirm capture and sensing in the second classification window occurs to confirm non-capture, then the second classification window is not *conditionally triggered* for either of these confirmations.

Applicant respectfully asserts Schroepfel fails to teach or suggest that there are situations where the second classification window is not established and sensing in the second classification window does not occur. A triggerable window, as recited in Applicant's independent claims, is established in response to the presence of the triggering characteristic and is not triggered if the triggering characteristic is not present. Schroepfel does not teach or suggest any situation in which establishment of and sensing in the second classification window would not occur and thus does not describe a triggerable window.

Using claim 1 as an example, Applicant respectfully asserts that the Examiner is incorrectly interpreting Applicant's claim by ignoring the following italicized portions:

establishing a second classification window *if a trigger characteristic of the cardiac signal is detected in the first classification window*.

sensing the cardiac signal in the second classification window *if the second classification window is triggered*.

The Examiner rejection of the claim cannot be sustained because no patentable weight is given to these italicized portions which relate to how a second classification window is contingently triggered. As set forth in the MPEP: there is nothing inherently wrong about defining a claim element in terms of what the invention does. "A functional claim limitation must be evaluated and considered, just like any other limitation of the claims, for what it fairly conveys to a person of ordinary skill in the pertinent art and in the context in which it is used." (MPEP §2173.05(g))

Schroeppel does not teach or suggest a classification window that is established and is used for sensing contingent on detection of a trigger characteristic. For at least these reasons, Schroepel fails to anticipate claims in dependent claims 1, 39, 60, and 61 and all claims dependent thereon and the rejection under 35 U.S.C. §102(b).

Regarding the of the rejection of claims 1, 39, 60, and 61 under 35 U.S.C. §103(a), Applicant asserts that all claim elements are not described by Schroepel nor are they obvious in view of the teachings of the reference which is required for a rejection under 35 U.S.C. §103. Furthermore, even assuming *arguendo*, that it is obvious to include “an additional interval to provide the predictable result of ensuring capture has been detected” as asserted in the Office Action, this still does not render obvious providing a classification window that is contingently *triggerable* in response to the occurrence of certain events.

Claims 7, 9 and 42-43 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Schroepel. Claim 12 is rejected based on 35 U.S.C. §103(a) as being unpatentable over Schroepel in view of U.S. Patent No. 6,226,551 to Zhu et al. (hereinafter “Zhu”). Claims 26-30 and 50 are rejected based on 35 U.S.C. §103(a) as being unpatentable over Schroepel in view of U.S. Patent No. 6,238,419 to Lindgren (hereinafter “Lindgren”).

Each of these obviousness rejections relies on Schroepel as the primary reference. Applicant reasserts the arguments presented above with regard to the failure of Schroepel to describe all of the elements of the claims, including a second classification interval that is established in response to detection of a triggering characteristic or sensing in the second classification window if such a window is established. The deficiency of Schroepel at teaching at least these elements is not overcome by the references used in combination with Schroepel, because these references also do not teach or suggest the missing elements. Applicant asserts that it would not be obvious for one skilled in the art to modify the references in the way suggested by the Office Action in view of the clear lack of teaching of all of the claim limitations. For at least these reasons, dependent claims 7, 9, 12, 26-30, 42-43, and 50 are patentable over the asserted combinations.

It is to be understood that Applicant does not acquiesce to Examiner's characterization of the asserted art or Applicant's claimed subject matter, nor of the Examiner's application of the asserted art or combinations thereof to Applicant's claimed subject matter. Moreover, Applicant does not acquiesce to any explicit or implicit statements or conclusions by the Examiner concerning what would have been obvious to one of ordinary skill in the art, obvious design choices, alternative equivalent arrangements, common knowledge at the time of Applicant's invention, officially noticed facts, and the like. Applicant respectfully submits that a detailed discussion of each of the Examiner's rejections beyond that provided above is not necessary, in view of the clear absence of teaching and suggestion of various features recited in Applicant's pending claims and lack of motivation to combine reference teachings. Applicant, however, reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.142PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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